

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK



UNITED STATES OF AMERICA,

v.

20-CR-192 (JLS) (JJM)

MOHAMMED ALAWI,

Defendant.

DECISION AND ORDER

Defendant Mohammed Alawi is charged with possessing with intent to distribute, and distributing, hydrocodone within 1,000 feet of a public elementary school on two occasions in 2019. *See* Dkt. 22. Alawi filed pretrial motions with United States Magistrate Judge Jeremiah J. McCarthy, who was designated to hear and determine, and report and recommend on, all pre-trial proceedings under 28 U.S.C. §§ 636(b)(1)(A) and (B). Dkt. 24.

As relevant here, Alawi moved: (1) to suppress statements he made to law enforcement on January 9, 2020; and (2) to suppress a pill bottle seized from the Bayview Deli on January 9, 2020. Dkt. 31. Judge McCarthy issued a Report, Recommendation and Order (“RR&O”) on March 24, 2021, recommending that this Court deny the suppression motion. Dkt. 40. Alawi objected to, among other things, the RR&O’s recommendation regarding his suppression motions. Dkts. 41, 43. The Government opposed Alawi’s objections. Dkt. 44. And Alawi filed a reply. Dkt. 45. The Court then issued a Decision and Order that denied Alawi’s motion

with respect to the pill bottle and ordered an evidentiary hearing with respect to the statements he made. Dkt. 46. The statements were given after Mr. Alawi had been read his *Miranda* rights and invoked his right to silence. At issue was whether the statements were made spontaneously.

Judge McCarthy held the evidentiary hearing on July 20, 2021. Dkt. 57. And the parties filed post-hearing briefs. Dkts. 70, 71. Judge McCarthy then issued a Report and Recommendation (“R&R”) that found the Government failed to meet its burden of proving the statements were spontaneous. Dkt. 72. As a result, the R&R recommends granting Alawi’s motion to suppress the statements. The Government filed an objection arguing that the R&R erred because nothing on record indicates Alawi was interrogated prior to making those statements, and that the record supports finding the statements were made spontaneously. Dkt. 73. Alawi did not file a response.

A district court may accept, reject, or modify the findings or recommendations of a magistrate judge. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). A district court must conduct a *de novo* review of those portions of a magistrate judge’s recommendation to which an objection is made. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3).

The Court has conducted a *de novo* review of the relevant record in this case, and studied the R&R, the objection, and the parties’ briefs. Based on that review, the Court accepts and adopts Judge McCarthy’s recommendation.

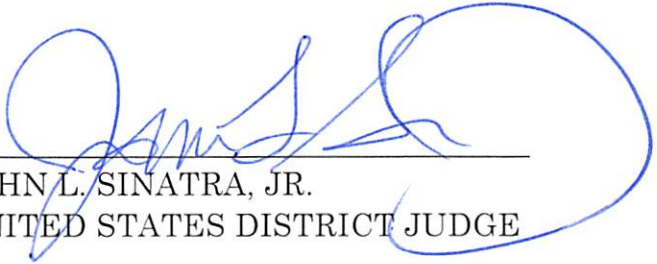
CONCLUSION

For the reasons stated above and in the R&R, Alawi's motion to suppress the statements he made on January 9, 2020, is GRANTED.

The parties shall appear before the Court on December 9, 2021, at 10:00 a.m., for a status conference to set a trial date.

SO ORDERED.

Dated: December 6, 2021
Buffalo, New York



JOHN L. SINATRA, JR.
UNITED STATES DISTRICT JUDGE